IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.951 OF 2001

M/s.Apsara Development Corpn.& Ors....Petitioners.

Vs.

TheMunicipal Corpn.& Ors. ...Respondents.

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Ms.F.Baiga with Mr.S.I.Menon for the Petitioners.

Mrs.A.R.Joshi for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

February 7, 2005.

P.C. :

1. The First Petitioner is a developer of a plot of land comprised in Survey No.133 (Hissa Nos.1, 3, 7 and 9), Survey No.484 (Hissa Nos.3 and 4), Survey No.137 (Hissa Nos.11 and 13), Survey No.139 and Survey No.145. These plots are situated at Gawde Nagar, S.N.Dubey Road, Dahisar (East). The First Petitioner entered into an agreement of development with the owner of the land. The dispute in the present case relates to a regularization penalty

charged by the Municipal Corporation on the construction of Building No.F. Plans for the construction of Building "F" comprising of part stilt, ground and six upper floors were approved on 19th November 1981. On 20th February 1982, a commencement certificate was issued upto the plinth level. The site was inspected by the officials of the Corporation and it was found that Building "F" was being constructed beyond the plinth level without obtaining further permission to carry out the work. A stop work notice was issued on 22nd September 1990 under Section 354A of the Mumbai Municipal Corporation Act, 1888. The work of construction was carried out despite the stop work notice. In July 1998, the Architect submitted a building completion certificate and sought the regularization of the work which was carried out beyond what was authorised by the commencement certificate. On 5th March 1999, the Petitioners were informed that regularization could be effected provided a penalty of Rs.6,80,450/- was paid. The Petitioners made a representation to the Municipal Commissioner requesting that the penalty should be charged for regularization by considering the land rate of the year 1990. This request was turned down by the Municipal Commissioner, it is stated in the reply filed by the Municipal Corporation, since

the work was already found to be carried out beyond the authorisation of the commencement certificate in the year 1990 when a stop work notice under Section 354A was issued. According to the Municipal Corporation, on 28th September 1990 when an inventory was taken after the issuance of a stop work notice, it was found that Building "F" had been constructed with an R.C.C. frame work upto the first slab level. This, according to the Municipal Corporation, showed that the work was a completed much later than 1990. Consequently, the request of the Petitioners to charge the penalty by considering the land rate of the year 1990 could not be acceded to. The construction of the building, according to the Corporation, was completed in 1998 since the Architect has submitted completion certificate in July 1998. The Municipal Corporation consequently agreed to regularise the work subject to the payment of penalty. The Petitioners were informed of this decision again and were called upon to pay the regularization penalty on 12th October 1999 and 17th January 2000. Despite this, penalty was not paid, upon which a notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 was issued on 9th November 2000.

2. A suit was thereupon filed in the City Civil Court on 22nd December 2000 (Suit No.7367 of 2000) by a flat purchaser in which the City Civil Court passed an order on 22nd December 2000, restraining the Municipal Corporation from pulling down the aforesaid flat alone, being Flat No.14 in Building "F". However, subsequently, the entire action of the Municipal Corporation came to be stayed till 8th February 2001. On 22nd February 2001, the City Civil Court directed the Additional Municipal Commissioner to consider the representation made by the Petitioners and to pass a reasoned order on or before 8th March 2001. This period was subsequently extended until 3rd April 2001 and it was brought to the notice of the City Civil Court that the AMC had rejected the representation filed by the Petitioners. This was intimated to the Petitioners on 29th March 2001. The Municipal Corporation in its reply has contended, and in my view, not without justification, that the proceedings before the City Civil Court were instituted with a malafide motive of withholding the dues which were payable to the Corporation.

3. In the affidavit in reply which is filed by the Municipal Corporation, it has been stated that the

penalty of Rs.6,80,450/- is based on the land rate of 1998. In one of the representations of the Petitioners (Exh.G), the request was that the penalty should be charged at the rate of land as of 1994. The Municipal Corporation in its reply stated that the building completion certificate having been submitted on 27th July 1998, this is sufficient to indicate that the building was not at all completed between the year 1990 and 1994, Hence, the request of the Petitioners was rejected. In the present case, Counsel appearing on behalf of the Municipal Corporation has submitted before the Court that despite the issuance of a stop work notice, the work was carried out. However, since the work was in accordance with the plans and within the available F.S.I., the Municipal Corporation had agreed to regularization in terms of its circular dated 24th May 1996. Under the aforesaid circular, where a commencement certificate is issued and further work is carried out after a stop work notice, but the work is in accordance with the plans, the charges for regularization would be based on 5% of the total land cost. The aforesaid circular was subsequently modified on 17th June 2004. The case of the Petitioners has been considered with reference to the earlier circular which held the field at the

material time.

4. There is absolutely no merit in the submission urged on behalf of the Petitioners. The Petitioners carried out work despite the issuance of a stop work notice under Section 354A. The Corporation would in fact, have been justified in taking action in accordance with law since the Petitioners unauthorisedly carried out construction despite a stop work notice. However, after considering the proposal, the Corporation has levied a penalty of Rs.6,80,450/- on 5th March 1999 by its letter at Exh.A. The demand was in accordance with the circular dated 24th May 1996 which held the field. The Petitioners sought a fixation of the amount of the penalty on the basis of the land value of an earlier date. This request was misconceived since construction was completed in or around July 1998 upon which a plea for regularisation was made. In the circumstances, for the reasons already indicated, there is no merit in the Petition. At the interim stage, the Corporation was injuncted by an interim order in terms of prayer clause (b) from acting in pursuance of the notice under Section 53(1) subject to the Petitioners depositing a sum of Rs.2 lakhs with the Respondents. Counsel for the Corporation states

that the aforesaid amount has been deposited. The Petitioners are, however, given time until 21st February 2005 to deposit the balance of the charges demanded for regularization by the Corporation's notice dated 5th March 1999. In the event that the charges are paid, the Corporation should accept those charges and proceed to deal with the matter of regularization in accordance with law. The Petitioners shall, however, pay to the Corporation, interest at the rate of 12% per annum on the amount which has been demanded from 5th March 1999 until the date on which payment is effected. In the event that there is any breach on the part of the Petitioners in doing so, the Corporation will at at liberty to take such action in accordance with law as it deems fit.

5. The Petition is accordingly disposed of in the aforesaid terms. No costs.

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